

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:12-CR-463 JCM (VCF)

Plaintiff(s),

ORDER

v.

FREDERICK VERNON WILLIAMS,

Defendant(s).

Presently before the court are the report and recommendation of Magistrate Judge Ferenbach. (Doc. # 293). Defendant Frederick V. Williams filed an objection to the recommendation. (Doc. # 300). The government filed a response to plaintiff's objection. (Doc. # 303).

This matter involves the prosecution of defendant for fraudulently procuring United States passports, unemployment benefits, and Nevada identification cards. (*See, e.g.*, doc. # 293). Defendant filed a motion to dismiss arguing that the government's third superseding indictment is a product of prosecutorial vindictiveness and should be dismissed. (*See* doc. # 256.)

In his report, Magistrate Judge Ferenbach recommended that defendant's motion to dismiss (doc. # 256) be denied. (*See* doc. # 293). Magistrate Judge Ferenbach found that the defendant's argument failed first, as a matter of law, because defendant's entire argument rested on the procedural history of the action, and second, because there was no indirect or circumstantial evidence of vindictiveness. (*See id.*)

Petitioner objected, arguing that Magistrate Judge Ferenbach ignored the totality of the circumstances. (*See* doc. # 300). The government's response argued that defendant failed to

1 raise any new issues in his objection to Magistrate Judge Ferenbach's report and
2 recommendation. (*See* doc. # 303).

3 This court "may accept, reject, or modify, in whole or in part, the findings or
4 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects
5 to a magistrate judge's report and recommendation, then the court is required to "make a de novo
6 determination of those portions of the [report and recommendation] to which objection is made."
7 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to
8 conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v.*
9 *Arn*, 474 U.S. 140, 149 (1985).

10 The court finds that Magistrate Judge Ferenbach did not err in finding that defendant's
11 motion to dismiss should be denied. The court agrees that defendant provides no objective
12 evidence of vindictiveness, nor any circumstantial evidence that remotely suggests the
13 government acted improperly.

14 Therefore, after reviewing Magistrate Judge Ferenbach's report, defendant's objections,
15 the government's response, and the underlying briefs de novo, the court adopts the report and
16 recommendation in full.

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and
19 recommendation of Magistrate Judge Ferenbach (doc. # 293) regarding defendant Frederick V.
20 Williams' motion to dismiss (doc. # 256) be, and the same hereby is, ADOPTED in its entirety.

21 IT IS FURTHER ORDERED that defendant Frederick V. Williams' motion to dismiss
22 the government's third superseding indictment (doc. # 256) be, and the same hereby is, DENIED
23 without prejudice.

24 DATED September 11, 2014.

25 
26 UNITED STATES DISTRICT JUDGE